

SERVICE DATE – APRIL 27, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42113

ARIZONA ELECTRIC POWER COOPERATIVE, INC.

v.

BNSF RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

Digest:¹ The Board orders the defendant carriers to pay reparations.

Decided: April 27, 2012

In 2008, Arizona Electric Power Cooperative, Inc. (AEPCO), filed a complaint challenging the reasonableness of the joint rates established by BNSF Railway Company (BNSF) and Union Pacific Railroad Company (UP) (collectively, defendants) for unit train coal transportation service from New Mexico and the northern portion of the Powder River Basin in Wyoming and Montana to AEPCO's Apache Generating Station located near Cochise, Ariz. In a decision served November 22, 2011, the Board found that AEPCO had shown that defendants have market dominance over those movements, and that their rates were unreasonable. Ariz. Elec. Power Coop. v. BNSF Ry., NOR 42113 (STB served Nov. 22, 2011). Accordingly, the Board ordered defendants to reimburse AEPCO (with interest) for amounts previously collected above prescribed levels. Id. at 39. The Board further ordered defendants to establish and maintain rates for movements of the issue traffic that do not exceed 180% of the variable costs of providing the service. Id.

On March 20, 2012, AEPCO filed an unopposed petition for an order directing payment. AEPCO states that it is entitled to reparations and interest as of January 10, 2012, for freight shipments tendered between January 2, 2009, and December 30, 2011, in the amount of \$9,244,143.90, with interest accruing in the amount of \$6.31 per day through March 31, 2012, and with interest from that date until the date of payment calculated in accordance with 49 C.F.R. pt. 1141.

There is no dispute regarding the calculation or amount of the damages awarded. Therefore, we will order defendants to pay reparations. If the parties are unable to agree on the interest accrued after March 31, 2012, they may petition the Board to rule on that matter.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Defendants are ordered to pay reparations to AEPCO in accordance with this decision.
2. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.